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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

6 \_\_\_\_\_ )  
7 GREGORY O. GARMONG, )  
8 Plaintiff, )  
9 vs. )  
10 LYON COUNTY et al., )  
11 Defendants. )  
12 \_\_\_\_\_ )

3:17-cv-00701-RCJ-CBC

**ORDER**

13 This case arises out of the approval of a cell tower in Lyon County. Pending before the  
14 Court are four motions to dismiss and a motion to strike.

15 **I. FACTS AND PROCEDURAL HISTORY**

16 Plaintiff Gregory Garmong resides in Lyon County, Nevada where he owns residential  
17 and commercial real property. (Compl. ¶ 7, ECF No. 1). On September 10, 2015, Defendant  
18 Smith Valley Fire Protection District (“the District”) signed an Option and Land Lease  
19 Agreement (“the Agreement”), which Defendant Verizon Wireless (“Verizon”) countersigned on  
20 November 15, for Verizon to construct a cell tower on property on which the District operates a  
21 fire station. (*Id.* ¶¶ 17–18). Plaintiff alleges the Agreement violates various statutes applicable to  
22 the District. (*Id.* ¶ 19). Plaintiff appears particularly concerned about a provision of the  
23 Agreement limiting the types of equipment the District can install at the fire station to avoid  
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1 interference with Verizon’s signal at the site, arguing that the limitations could affect the efficacy  
2 of fire service. (*See id.*). Defendant Lyon County (“the County”) approved a special use permit  
3 for the cell tower on December 3, 2015 without, Plaintiff alleges, the District and Verizon having  
4 completed a development application as required by law. (*Id.* ¶ 29).

5 Plaintiff sued the County, the Lyon County Board of Commissioners, the District, former  
6 President of the Board of Directors of the District Michael P. Boudreau, Verizon, Epic Wireless  
7 (“Epic”), and Andrew Lesa (an agent of Epic) in this Court for due process and equal protection  
8 violations, a civil rights conspiracy, violations of due process under the Nevada Constitution, and  
9 common law fraud and conspiracy. The District and Boudreau moved to dismiss based on issue  
10 preclusion due to a finally adjudicated state court action. Verizon, Epic, and Lesa separately  
11 moved to dismiss for lack of standing, issue preclusion, failure to state a claim, and failure to  
12 plead fraud with particularity. The District and Boudreau joined the latter motion. The Court  
13 dismissed, with leave to amend, for lack of standing. Plaintiff has filed the First Amended  
14 Complaint (“FAC”), and Defendants have filed three motions to dismiss.<sup>1</sup> Plaintiff has filed a  
15 motion to strike certain exhibits to one of the motions to dismiss.

## 16 **II. DISCUSSION**

17 The Court previously ruled that Plaintiff’s allegation that he had been harmed because the  
18 County had failed to comply with the law was precisely the kind of generalized grievance that  
19 the Supreme Court has consistently rejected as insufficient to invoke the federal judicial power  
20 under Article III of the Constitution. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 575 (1992)  
21 (“‘It is an established principle,’ we said, ‘that to entitle a private individual to invoke the  
22 judicial power to determine the validity of executive or legislative action he must show that he  
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24 <sup>1</sup> A fourth motion to dismiss was filed before the FAC was filed.

1 has sustained or is immediately in danger of sustaining a direct injury as the result of that action  
2 and it is not sufficient that he has merely a general interest common to all members of the  
3 public.” (quoting *Ex parte Levitt*, 302 U.S. 633, 634 (1937))). “[A]n injury amounting only to  
4 the alleged violation of a right to have the Government act in accordance with law [i]s not  
5 judicially cognizable because assertion of a right to a particular kind of Government conduct,  
6 which the Government has violated by acting differently, cannot alone satisfy the requirements  
7 of Art. III without draining those requirements of meaning.” *Id.* at 575–76 (internal quotation  
8 marks omitted). Plaintiff had not alleged any particularized harm to him resulting from the  
9 alleged violations of law. He alleged only a conjectural, hypothetical injury, i.e., that the cell  
10 tower would limit or interfere with the District’s communications equipment and thereby  
11 degrade the quality of fire and rescue services in the area, which he might someday have to rely  
12 on.

13 The Complaint included three paragraphs relating to standing. (Compl. ¶¶ 47–49).  
14 Plaintiff concluded that “he is directly harmed by the terms of the Agreement . . . because he is  
15 dependent upon [the District] for emergency medical services,” (*id.* ¶¶ 47–48), but the  
16 allegations only confirmed that the case was a generalized grievance. Plaintiff alleged that he  
17 “also is interested, as a citizen, in having the laws executed and the public’s right enforced.  
18 Defendants have violated public rights defined by laws that are common to the entire  
19 community.” (*Id.* ¶ 49). That statement essentially paraphrased the Supreme Court’s doctrine of  
20 the non-justiciability of generalized grievances. An injury must be concrete and particularized,  
21 meaning “the injury must affect the plaintiff in a personal and individual way,” *Lujan*, 504 U.S.  
22 at 560 & n.1, and it must be “actual or imminent, not conjectural or hypothetical,” *id.* at 560  
23 (internal quotation marks omitted). Plaintiff’s allegations satisfied neither requirement. He  
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1 complained of an injury that was not only “conjectural and hypothetical” but which affected a  
2 class of citizens in Lyon County the same as it affected him, based on the County’s alleged  
3 failure to follow the law. In his response to a previous motion to dismiss, Plaintiff argued public  
4 policy based on various statutes relating to emergency services, but he did not identify any  
5 statute giving him standing to sue for violations thereof. Every “injury in fact” listed in the  
6 response was a generalized grievance about state actors allegedly failing to follow the law. They  
7 were political grievances, not cognizable legal injuries, i.e., concrete, particularized, and actual  
8 or imminent injuries to Plaintiff’s liberty or property interests.

9       The FAC has not added allegations indicating any concrete, particularized, and  
10 immediate or imminent injury resulting from Defendants’ actions. Rather, as Defendants note,  
11 the FAC simply dresses the generalized grievances with talismanic language. Plaintiff  
12 essentially complains that a contract to which he is not a party and a local government’s approval  
13 of the contract are inconsistent with state law and/or violate his constitutional rights. The FAC  
14 also includes a paragraph titled “PLAINTIFF’S INTEREST IN NEVADA GOVERNMENTAL  
15 INSTITUTIONS OBEYING THE LAW,” which, again, summarizes the generalized grievance  
16 doctrine. Plaintiff claims he has been injured by not having received notice of the pendency of a  
17 development application. But he identifies no state law entitling him to personal notice of such  
18 an application. The Due Process Clause of the Fourteenth Amendment gave him no right to  
19 personal notice, because he had no property or liberty interest to lose by the approval of the  
20 application, only a speculative fear that he may some day need fire and rescue services and that  
21 those services may be degraded due to limitations on communications equipment under the  
22 agreement. He claims he has been injured because he is threatened with future injury, i.e., the  
23 speculative impairment of fire and rescue services should he need them. That is not an actual or  
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1 imminent injury. The future injury Plaintiff alleges is speculative in at least two independent  
2 ways. First, it is speculative as to his future need for fire or rescue services. Second, it is  
3 speculative as to any negative effect on those services stemming from the development  
4 application.

5       The Court therefore grants the Motions to Dismiss (ECF Nos. 61, 64) for lack of Article  
6 III standing. The remaining Defendants have joined Motion to Dismiss (ECF No. 61). (*See*  
7 Joinder, ECF No. 63). The Court denies the Motions to Dismiss (ECF Nos. 57, 60) as moot.  
8 The former motion was superseded by the filing of the FAC, and the latter motion only addresses  
9 issues the Court needn't reach. The Court denies the Motion to Strike (ECF No. 72) as moot  
10 because the motion challenges exhibits to Motion to Dismiss (ECF No. 64) that concern the  
11 merits, and the Court denies the relevant portions of Motion to Dismiss (ECF No. 64) as moot.

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1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Stipulations for Extension of Time (ECF Nos. 62,  
3 71) are GRANTED.

4 IT IS FURTHER ORDERED that the Motion to Dismiss (ECF No. 61) is GRANTED.

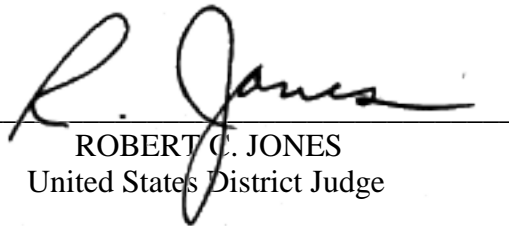
5 IT IS FURTHER ORDERED that the Motion to Dismiss (ECF No. 64) is GRANTED IN  
6 PART for lack of Article III standing and DENIED IN PART as moot on the other grounds  
7 presented.

8 IT IS FURTHER ORDERED that the Motions to Dismiss (ECF Nos. 57, 60) and the  
9 Motion to Strike (ECF No. 72) are DENIED as moot.

10 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

11 IT IS SO ORDERED.

12 DATED: This 7<sup>th</sup> day of November, 2018.

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15 ROBERT C. JONES  
16 United States District Judge  
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